

PTO/SB/21 (09-04)

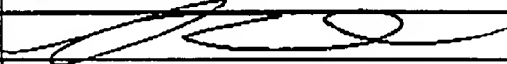
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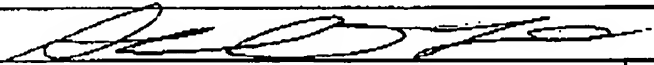
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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10/763,807	
	Filing Date	1/22/2004	
	First Named Inventor	Shanier, et al	
	Art Unit	1617	
	Examiner Name	NYA	
Total Number of Pages in This Submission	6	Attorney Docket Number	10447

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): REQUEST FOR INTERFERENCE BETWEEN APPLICATIONS PURSUANT TO 37 C.F.R. §1.604
<div style="border: 1px solid black; padding: 2px;">Remarks</div>		

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Firm Name	National IP Rights Center, LLC		
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re nonprovisional patent application of:

Stuart D. Shanler and Andrew Ondo

Group Art Unit: 1617

Application No: 10/763,807

Examiner Name: unknown

For: METHOD AND THERAPEUTIC/COSMETIC TOPICAL COMPOSITIONS
FOR THE TREATMENT OF ROSACEA AND SKIN ERYTHEMA USING α_1 -
ADRENOCEPTOR AGONIST

Filing Date: JANUARY 22, 2004

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Mail Stop Interference

Request for Interference Between Applications Pursuant to 37 C.F.R. §1.604

Dear Sir:

The Applicants request an interference between their nonprovisional application 10/763,807, filed January 22, 2004, and the published application 2004/0242588 of Dejovin et al., filed May 25, 2004, under the provisions of 37 C.F.R. §1.603.

Under 37 C.F.R. §1.603, an interference may be declared between two or more applications if "...the examiner is of the opinion that there is interfering subject matter claimed in the applications which is patentable to each applicant subject to a judgment in the interference. The interfering subject matter shall be defined by one or more counts. Each application must contain, or be amended

to contain, at least one claim that is patentable over the prior art and corresponds to each count. All claims in the applications which define the same patentable invention as a count shall be designated to correspond to the count."

The Applicants believe their nonprovisional application 10/763,807 and published application 2004/0242588 claim the same patentable invention, as defined by 35 U.S.C. 135, which is patentable to each applicant subject to a judgment in the interference. Each application claims a method for treating the symptoms of the skin disease rosacea by the topical use of a composition containing at least one compound known to be an α -adrenoceptor agonist. In this regard the two inventions are inherently identical. However, the mechanisms and activities of the compositions described in both nonprovisional application 10/763,807 and published application 2004/0242588 are different. Dejovin et al. claim that the compounds oxymetazoline, tetrahydrozoline, naphazoline, xylometazoline, and phenylephrine have target specificity for α_2 -adrenoceptors, whereas the Applicants claim that these compounds have target specificity for α_1 -adrenoceptors.

Furthermore, no method for the treatment of the symptoms of rosacea, using oxymetazoline, tetrahydrozoline, naphazoline, xylometazoline, or phenylephrine to, is described in Dejovin et al.'s provisional application 60/473,611. Dejovin et al.'s published application is a continuation in part in which the critical subject matter is added. Therefore, Dejovin et al. may not claim priority from their provisional application for these methods claimed in their published application.

Applicants also believe that the activity of the compounds upon α_1 -adrenoceptors, rather than α_2 -adrenoceptors, causes the desired vasoconstriction. No matter which adrenoceptor is acted upon, the two inventions are inherently identical because each claims a method where the same compounds are used in the same manner to treat the same symptoms of rosacea.

The Applicants have no knowledge of any other prior art either describing or anticipating this method for the treatment of rosacea. The count required under 37 C.F.R. §1.603 and 37 C.F.R. §1.604 is listed below.

Additionally, M.P.E.P. 2303 states that interferences will not be declared between pending applications if the effective filing dates of the applications are more than three months for inventions of a "simple character" and six months for inventions in other cases. In this case the Applicants' nonprovisional application 10/763,807, has an effective filing date of January 22, 2004, whereas Dejovin et al.'s published application 2004/0242588 was filed four months and three days later on May 25, 2004. The Applicants argue for the declaration of an interference in this case because the patentable invention is not of a "simple character" and the difference between the effective filing dates are within the six month limit.

The Applicants' Proposed Count

1. A method for treating rosacea comprising administering topically to said subject, for such period of time as is required to elicit the desired therapeutic response, a therapeutically or cosmetically effective amount of at least one α_1 -adrenoreceptor agonist.

CONCLUSION

In view of the foregoing count, the Applicants request that an interference be declared between their nonprovisional application 10/763,807 and the published application 2004/0242588 of Dejovin et al. under the provisions of 37 C.F.R. §1.603.

If the Examiner has any questions regarding the foregoing request for an interference, or if the prosecution of this application could be furthered by a telephone interview, the Examiner is requested to telephone the Applicants' undersigned attorney.

Respectfully submitted,

By: 
Scott J Fields
Registration No. 32,857

Dated: 4/19/05

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